

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

v.

**JOEL A. SMITHERS,
Defendant,**

MEMORANDUM ORDER

Case No. 1:17cr00027

This matter is before the undersigned on the Second Motion For Continuance, (Docket Item No. 96) (“Motion”), filed on behalf of the defendant, seeking a continuance of the trial currently scheduled for April 29 to May 24, 2019. In the Motion, defense counsel argues that a continuance is necessary to allow adequate time to review additional documentary evidence provided to him by the Government on March 15, 2019. The Motion was heard before the undersigned on March 22, 2019. At this hearing, the Government admitted that the information provided to defense counsel on March 15, 2019, had been in its possession for several months, although counsel asserted that much of this evidence previously had been provided to defense counsel. The court requested, and the Government has provided, information regarding what, if any, of the documents provided to defense counsel on March 15, 2019, had not been provided previously. The Government asserts that roughly half of the documents provided to defense counsel on March 15, 2019, were provided previously to defense counsel.

The court notes that this felony criminal case has been pending since the return of the Indictment against the defendant on September 12, 2017. A Superseding Indictment was issued against the defendant on December 18, 2017. By Order entered June 5, 2018, the Government was required to provide defense counsel with the materials described in Federal Rules of Criminal Procedure Rule 16(a)(1) by no later than June 28, 2018. To date, no extension of this deadline has been requested by the Government.

Therefore, based on the above it is **ORDERED** as follows:

1. The Government shall not be allowed to use at trial any document or information it provided to defense counsel for the first time on March 15, 2019; and
2. The Motion is **DENIED**, and the trial and pretrial conference in this matter shall proceed as scheduled.

The parties shall govern themselves accordingly.

ENTER: March 29, 2019.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE